

1867.
March 6.
Referred Case.

Harbour. Sec. 15 makes certain other acts penal in 'any other arm of the sea, creek, or river' in the Bombay Presidency. The word 'other' in Sec. 15 appears to me to exclude the Harbour of Bombay, for which special provision is made in the preceding section.

"It appears probable that the act of the accused is a *casus omissus*; but this is by no means certain, and even if it were certain, it would not be proper for a court of criminal jurisdiction to legislate, or to supply omissions made by the Legislature, by declaring acts penal for which the Legislature has prescribed no penalty."

The case came on for hearing this day before COUCH, C.J., and NEWTON, J.

PER CURIAM:—The Court reverses the conviction and sentence; as the act charged does not constitute an offence under the Bombay Ferries' Act.

Conviction and sentence reversed.

REG. V. RAGHOJI bin KA'NOJI.

Ind. Pen. Code, Secs. 416 and 177—Crim. Proc. Code, Secs. 426 and 434.

On a reference by a Session Judge, in reviewing the monthly magisterial returns, where the conviction by the Magistrate was for cheating by personation, and the offence appeared to the High Court to be furnishing false information,—for which the punishment awarded was legal:—

Held that the Court, under Sec. 426 of the Crim. Proc. Code, ought not to interfere with the conviction or sentence.

March 6.
Referred Case.

THE accused was convicted, in the month of December 1866, by A. K. Nairne, Magistrate F. P. in the Ratnágiri District, of the offence of cheating by personation, and thereby inducing the delivery of a stamped paper; and sentenced to pay a fine of one rupee, or in default to suffer one day's simple imprisonment, under Sec. 417 of the Indian Penal Code.

The record and proceedings had been called for, on a review of the Magistrate's monthly return, by R. H. Pinhey, Session Judge of the Konkan,—who had noted that the sen-

tence appeared to be very inadequate to the offence charged ; and were now referred, under Sec. 434 of the Criminal Procedure Code, for the orders of the High Court, with a view to the reversal of the conviction and sentence, with the following remarks :—

1867.
March 6.
Referred Case.

“By the definition of cheating given in Sec. 415 of the Indian Penal Code it is necessary that the offender should do something fraudulently or dishonestly, or with the intention to deceive, if he be convicted of cheating. I am unable to see, from the record and proceedings in this case, that the accused did anything fraudulently, dishonestly, or with the intention to deceive. Yesu gave accused four annas with which to buy a stamp for him (Yesu) ; and when the stamp vendor asked accused his name, he gave Yesu's instead of his own,—as it appears to me from stupidity, and not with any wish to deceive.”

The case was heard by COUCH, C.J., and NEWTON, J.

PER CURIAM :—The Session Judge should inform the Magistrate that the offence was not cheating by personation, but an offence under Sec. 177 of the Indian Penal Code ; but Sec. 426 of the Code of Criminal Procedure makes it unnecessary for the Court to interfere.

No order.

Reg. v. SAMSEN BA'BA'JI.

Crim. Proc. Code, Sec. 44—Compensation.

On a reference by a Session Judge, an order made by a Magistrate under Sec. 44 of the Criminal Procedure Code—awarding compensation to the complainant out of a fine inflicted for causing hurt—reversed : as there was no evidence on the record to show that “loss” was caused, or that “any special damage of a pecuniary nature resulted” to the complainant by the offence.

THE accused was convicted, in the month of January 1867, by W. M. Salmon, Magistrate F. P. in the Tháná District, of the offence of voluntarily causing hurt ; and sentenced to pay a fine of Rs. 50, or in default to suffer two months' simple imprisonment, under Sec. 321 of the Indian

May 1.
Referred Case.